

TITLE 10--ARMED FORCES

Subtitle A--General Military Law

PART IV--SERVICE, SUPPLY, AND PROCUREMENT

CHAPTER 152--ISSUE OF SUPPLIES, SERVICES, AND FACILITIES

Sec. 2553. Articles and services of industrial facilities: sale to persons outside the Department of Defense

(a) Authority To Sell Outside DOD.--(1) The Secretary of Defense may sell in accordance with this section to a person outside the Department of Defense articles and services referred to in paragraph (2) that are not available from any United States commercial source.

(2)(A) Except as provided in subparagraph (B), articles and services referred to in paragraph (1) are articles and services that are manufactured or performed by any working-capital funded industrial facility of the armed forces.

(B) The authority in this section does not apply to sales of articles and services by a working-capital funded Army industrial facility (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof, which are governed by regulations required by section 4543 of this title.

(b) Designation of Participating Industrial Facilities.--The Secretary may designate facilities referred to in subsection (a) as the facilities from which articles and services manufactured or performed by such facilities may be sold under this section.

(c) Conditions for Sales.--A sale of articles or services may be made under this section only if--

(1) the Secretary of Defense determines that the articles or services are not available from a commercial source in the United States;

(2) the purchaser agrees to hold harmless and indemnify the United States, except in any case of willful misconduct or gross negligence, from any claim for damages or injury to any person or property arising out of the articles or services;

(3) the articles or services can be substantially manufactured or performed by the industrial facility concerned with only incidental subcontracting;

(4) it is in the public interest to manufacture the articles or perform the services;

(5) the Secretary determines that the sale of the articles or services will not interfere with the military mission of the industrial facility concerned; and

(6) the sale of the goods and services is made on the basis that it will not interfere with performance of work by the industrial facility concerned for the Department of Defense.

(d) Methods of Sale.--(1) The Secretary shall permit a purchaser of articles or services under this section to use advance incremental funding to pay for the articles or services.

(2) In the sale of articles and services under this section, the Secretary shall--

(A) charge the purchaser, at a minimum, the variable costs, capital improvement costs, and equipment depreciation costs that are associated with the articles or services sold;

(B) enter into a firm, fixed-price contract or, if agreed by the purchaser, a cost reimbursement contract for the sale; and

(C) develop and maintain (from sources other than appropriated funds) working capital to be available for paying design costs, planning costs, procurement costs, and other costs associated with the articles or services sold.

(e) Deposit of Proceeds.--Proceeds from sales of articles and services under this section shall be credited to the funds, including working capital funds and operation and maintenance funds, incurring the costs of manufacture or performance.

(f) Relationship to Arms Export Control Act.--Nothing in this section shall be construed to affect the application of the export controls provided for in section 38 of the Arms Export Control Act (22 U.S.C. 2778) to items which incorporate or are produced through the use of an article sold under this section.

(g) Definitions.--In this section:

(1) The term ``advance incremental funding'', with respect to a sale of articles or services, means a series of partial payments for the articles or services that includes--

(A) one or more partial payments before the commencement of work or the incurring of costs in connection with the manufacture of the articles or the performance of the services, as the case may be; and

(B) subsequent progress payments that result in full payment being completed as the required work is being completed.

(2) The term ``variable costs'', with respect to sales of articles or services, means the costs that are expected to fluctuate directly with the volume of sales and--

(A) in the case of articles, the volume of production necessary to satisfy the sales orders; or

(B) in the case of services, the extent of the services sold.

(Added Pub. L. 103-337, div. A, title III, Sec. 339(a)(1), Oct. 5, 1994, 108 Stat. 2718.)

Effective Date

Section 339(b) of Pub. L. 103-337 provided that: ``Section 2553 of title 10, United States Code, as added by subsection (a), shall take effect on April 1, 1995."